

Damages (Scotland) [H.L.]

**A
BILL
INTITULED**

An Act to clarify and amend the law of Scotland concerning the right of certain relatives of a deceased person, and the right of executors, to claim damages in respect of the death of the deceased from personal injuries; to make provision regarding solatium where personal injuries result in loss of expectation of life; and for connected purposes.

The Lord Macaulay of Bragar

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Damages (Scotland) Bill [H.L.]

EXPLANATORY AND FINANCIAL MEMORANDUM

This Bill gives effect to the Scottish Law Commission Report on the Effect of Death on Damages (Scot Law Com No 134).

Clause 1 amends section 1(4) of the Damages (Scotland) Act 1976 by inserting a new provision which clarifies the practice of the courts in making a loss of society award to the relatives of a deceased person. The new provision ensures that the courts are not required to make a separate award in respect of each distinct head of injury of loss which may be relevant in any particular case but allows the court to make such a separate award where that is thought appropriate.

Clause 2 inserts a new section 1A into the Damages (Scotland) Act 1976 which provides that any right to damages under Clause 1 of the Bill which rests in the relative's immediately before his death are transmissible unconditionally to the relative's executor. It also re-enacts the present law with regard to the transmissibility of the relative's right to damages for loss of support and funeral expenses.

Clause 3 substitutes a new section 2 in the Damages (Scotland) Act 1976 which provides for the transmissibility of any right to damages by way of solatium to be transmitted to the executor and re-enacts the present law with regard to the transmissibility of the right to damages for patrimonial loss. It also provides that a right to damages for patrimonial loss in respect of injury resulting from defamation, or other verbal injury, or other injury to reputation transmits unconditionally to the claimants executor and that the corresponding right to damages, other than for patrimonial loss, transmits only if the deceased had brought an action before his death.

Clause 4 inserts a new section 2A into the 1976 Act. The proposed section 2A is technical and in part re-enacts current provisions contained in section 2(1) and (2) of the Damages (Scotland) Act 1976. It provides for the enforcement of any right transmitted to an executor under the proposed section 1A of the 1976 Act or the proposed section 2 contained in Clauses 2 and 3.

Clause 5 inserts a new section 9A in the Damages (Scotland) Act 1976. It requires the court in awarding damages where the injured person's expectation of life has been reduced and where the injured person is, was, or is likely to become aware of that reduction, to have regard to the extent of his suffering in consequences of his awareness. It also provides that except for this provision no damages by way of solatium are recoverable for loss expectation of life.

Clause 6 contains transitional provisions. It provides that the new transmissibility rules for non-patrimonial claims on the proposed sections 1A and 2 of the Damages (Scotland) Act 1976 should apply only in relation to deaths after the commencement has a vested right to claim for a non-patrimonial award and dies after commencement.

Clause 7 provides for interpretation, minor and consequential amendments and repeals.

Clause 8 provides for the short title, the application and extent and the Schedule contains a number of consequential amendments.

Financial Effects of the Bill

The Bill is expected to have a neutral effect on public expenditure.

Effect of the Bill on Public Service Manpower

The Bill should have no effect on public service manpower.

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An Act to clarify and amend the law of Scotland concerning the right of certain relatives of a deceased person, and the right of executors, to claim damages in respect of the death of the deceased from personal injuries; to make provision regarding solatium where personal injuries result in loss of expectation of life; and for connected purposes. A.D. 1992.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

- 5 1. In section 1(4) of the Damages (Scotland) Act 1976 (in this Act referred to as "the 1976 Act") for the words from "the loss" to the end there shall be substituted the words "all or any of the following—
- (a) distress and anxiety endured by the relative in contemplation of the suffering of the deceased before his death;
- 10 (b) grief and sorrow of the relative caused by the deceased's death;
- (c) the loss of such non-patrimonial benefit as the relative might have been expected to derive from the deceased's society and guidance if the deceased had not died;
- and the court in making an award under this subsection shall not be
- 15 required to ascribe specifically any part of the award to any of paragraphs (a), (b) and (c) above."

Rights of relatives of a deceased person.

1976 c. 13

2. After section 1 of the 1976 Act there shall be inserted the following section—

Transmissibility to executor of rights of deceased relative.

- 20 "Transmissibility to executor of rights of deceased relative.
- 1A. Any right to damages under any provision of section 1 of this Act which is vested in the relative concerned immediately before his death shall be transmitted to the relative's executor; but, in determining the amount of damages payable to an executor by virtue of this section, the court shall have regard only to the period ending immediately before the relative's death."

Transmissibility
to executor of
deceased's right
to solatium for his
injuries.

3. For section 2 of the 1976 Act there shall be substituted the following section—

"Rights
transmitted to
executor in
respect of
deceased
person's injuries.

2.—(1) Subject to the following provisions of this section, there shall be transmitted to the executor of a deceased person the like rights to damages in respect of personal injuries (including a right to damages by way of solatium) sustained by the deceased as were vested in him immediately before his death. 5

(2) There shall not be transmitted to the executor under this section a right to damages by way of compensation for patrimonial loss attributable to any period after the deceased's death. 10

(3) In determining the amount of damages by way of solatium payable to an executor by virtue of this section, the court shall have regard only to the period ending immediately before the deceased's death. 15

(4) In so far as a right to damages vested in the deceased comprised a right to damages (other than for patrimonial loss) in respect of injury resulting from defamation or any other verbal injury or other injury to reputation sustained by the deceased, that right shall be transmitted to the deceased's executor only if an action to enforce that right had been brought by the deceased before his death and had not been concluded by then within the meaning of section 2A(2) of this Act." 20 25

Enforcement by
executor of rights
transmitted to
him.

4. After section 2 of the 1976 Act there shall be inserted the following section—

"Enforcement by
executor of rights
transmitted to
him.

2A.—(1) For the purpose of enforcing any right transmitted to an executor under section 1A or 2 of this Act, the executor shall be entitled to bring an action or, if an action for that purpose had been brought by the deceased before his death and had not been concluded by then, to be sisted as pursuer in that action. 30

(2) For the purpose of subsection (1) above, an action shall not be taken to be concluded while any appeal is competent or before any appeal taken has been disposed of." 35

Solatium for loss
of expectation of
life.

5. After section 9 of the 1976 Act there shall be inserted the following section—

"Solatium for
loss of
expectation of
life.

9A.—(1) In assessing, in an action for damages in respect of personal injuries, the amount of damages by way of solatium, the court shall, if— 40

(a) the injured person's expectation of life has been reduced by the injuries; and

(b) the injured person is, was at any time or is likely to become, aware of that reduction, 45

have regard to the extent that, in consequence of that awareness, he has suffered or is likely to suffer.

(2) Subject to subsection (1) above, no damages by way of solatium shall be recoverable in respect of loss of expectation of life.

(3) The court in making an award of damages by way of solatium shall not be required to ascribe specifically any part of the award to loss of expectation of life.”.

6.—(1) The following shall not have effect where the deceased concerned died before the commencement of this Act—

Transitional provisions.

(a) the amendment made to section 1(4) of the 1976 Act by section 1 of this Act;

(b) section 1A of the 1976 Act;

(c) section 2 (as substituted by section 3 of this Act) of the 1976 Act;

(d) without prejudice to subsection (3) below, section 2A of the 1976 Act;

(e) the repeal of section 3 of the 1976 Act;

(f) the amendment made to section 10(1) of the 1976 Act by paragraph 3 of the Schedule to this Act; and

(g) the amendment made to the Administration of Justice Act 1982 by paragraph 4 of the Schedule to this Act. 1982 c. 53.

(2) If—

(a) a right to a loss of society award; or

(b) a right to damages by way of solatium in respect of the death of a person under the law in force before 13th May 1976,

has vested in a person before the commencement of this Act and that person dies after such commencement, the right shall be transmitted to that person's executor; but, in determining the amount of an award payable to an executor by virtue of this subsection, the court shall have regard only to the period ending immediately before the person's death.

(3) Section 2A of the 1976 Act shall have effect in relation to a right transmitted under subsection (2) above as it has effect in relation to a right transmitted under section 1A or 2 of that Act.

(4) Section 9A of the 1976 Act shall not affect any proceedings commenced before this Act comes into operation.

7.—(1) In any enactment passed or made before this Act, unless the context otherwise requires, any reference to a loss of society award shall be construed as a reference to an award under section 1(4) of the 1976 Act as amended by section 1 of this Act.

Interpretation, minor and consequential amendments and repeals.

(2) The enactments mentioned in the Schedule to this Act shall have effect subject to the minor and consequential amendments respectively specified in that Schedule.

(3) The following provisions of the 1976 Act are hereby repealed—

Section 3;

In section 10(1) the definition of “loss of society award”;

Section 11;
Section 12(3) and (4);
Schedule 2.

Short title,
application to
Crown,
commencement
and extent.

8.—(1) This Act may be cited as the Damages (Scotland) Act 1992.

(2) This Act binds the Crown.

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(3) This Act shall come into force at the end of the period of 2 months beginning with the day on which it is passed.

(4) This Act extends to Scotland only.

SCHEDULE

CONSEQUENTIAL AMENDMENTS

The Damages (Scotland) Act 1976 (c.13)

1. In section 4 for the words from "nor is" to "said section 1" there shall be substituted the words "or by a deceased relative's executor under section 1A of this Act; nor is a claim by a relative of a deceased person or by a deceased relative's executor for damages under the said section 1 or (as the case may be) the said section 1A".

2. At the end of section 6(3)(b) there shall be added the words "or, if the relative has died, by the relative's executor".

3. In section 10(1) at the end of the definition of "personal injuries" there shall be added the words "and injury resulting from defamation or any other verbal injury or other injury to reputation".

The Administration of Justice Act 1982 (c.53)

4. In section 13(1) at the end of the definition of "personal injuries" there shall be added the words "and injury resulting from defamation or any other verbal injury or other injury to reputation".

The International Transport Conventions Act 1983 (c.14)

5. In Schedule 1, in paragraph 1(2) for the words from "as defined in" to the end there shall be substituted the words "or for an award under section 1(4) of the Damages (Scotland) Act 1976 as amended by section 1 of the Damages (Scotland) Act 1992.".

The Criminal Justice Act 1988 (c.33)

6. In section 111(4)(c) for the words from "for loss" to the end there shall be substituted the words "may be made to any person who is a member of the deceased's immediate family (within the meaning of section 10(2) of the Damages (Scotland) Act 1976), being the kind of award described in section 1(4) of that Act; and".